

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 2:20CR2
(Judge KleeH)

RANDALL JOSEPH SMAIL,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 18],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On July 7, 2020, the Defendant, Randall Joseph Smail ("Smail"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count One of the Information. Smail stated that he understood that the magistrate judge is not a United States District Judge, and Smail consented to pleading before the magistrate judge. This Court referred Smail's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Smail's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Smail

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was competent to enter a plea, that the plea was freely and voluntarily given, that Smail was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 18] finding a factual basis for the plea and recommending that this Court accept Smail's plea of guilty to Count One of the Information.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Smail nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 18], provisionally **ACCEPTS** Smail's guilty plea, and **ADJUDGES** him **GUILTY** of the crimes charged in Count One of the Information.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until

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it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Smail, and prepare a presentence investigation report for the Court;

2. The Government and Smail shall each provide their narrative descriptions of the offense to the Probation Officer by **July 31, 2020;**

3. The presentence investigation report shall be disclosed to Smail, his counsel, and the Government on or before **September 29, 2020;** however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e) (3);

4. Counsel may file written objections to the presentence investigation report on or before **October 13, 2020;**

5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **October 27, 2020;** and

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6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **October 27, 2020**.

The Government did not seek detention. Accordingly, the magistrate judge released Smail on the terms of the Order Setting Conditions of Release [ECF No. 15], filed July 7, 2020.

The Court will conduct the **Sentencing Hearing** for Smail on **Friday, November 6, 2020, at 1:30 P.M.**, at the **Elkins, West Virginia** point of holding court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: July 22, 2020

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE